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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 PAUL HUPP,) Civil No. 12cv0492 GPC(RBB)
12)
13 Plaintiff,) **ORDER GRANTING IN PART AND**
14 v.) **DENYING IN PART PLAINTIFF'S**
15) **EMERGENCY EX PARTE MOTION TO**
16 SAN DIEGO COUNTY, SAN DIEGO) **QUASH RAYMOND WETZEL SUBPOENAS**
POLICE DEPARTMENT, et al.,) **[ECF NO. 133]**
Defendants.)
_____)

17 On July 23, 2013, Plaintiff Paul Hupp submitted a Notice of
18 Emergency Ex Parte Motion and Emergency Ex Parte Motion to Quash
19 Raymond Wetzel Subpoena; the Motion addresses two subpoenas for
20 records [ECF No. 133]. The Court stayed any production of records
21 under the subpoenas and set a briefing schedule for Plaintiff's Ex
22 Parte Motion. (See Mins., July 24, 2013, ECF No. 134.)
23 Plaintiff's Supplemental Brief Supporting Emergency Ex Parte Motion
24 to Quash Raymond Wetzel Subpoena [ECF No. 136] was filed nunc pro
25 tunc to July 24, 2013; it adds a third subpoena to Hupp's Motion to
26 Quash. On August 7, 2013, Defendants City of San Diego and Raymond
27 Wetzel filed their Opposition to Plaintiff's Motion to Quash
28 Subpoena [ECF No. 137]. Plaintiff's Reply was filed nunc pro tunc

1 to August 15, 2013 [ECF No. 144]. For the following reasons,
2 Plaintiff's Ex Parte Motion is GRANTED in part and DENIED in part.

3 **I. BACKGROUND**

4 On February 28, 2012, Plaintiff Paul Hupp, proceeding pro se,
5 commenced this action pursuant to 42 U.S.C. § 1983. (Compl. 1, ECF
6 No. 1.) Plaintiff's Third Amended Complaint was filed on August
7 28, 2012 [ECF No. 64], naming as Defendants San Diego County, City
8 of San Diego, City of Beaumont, James Patrick Romo, Raymond Wetzel,
9 William Kiernan, Peter Myers, and Joseph Cargel. (Third Am. Compl.
10 1, ECF No. 64.) Hupp's action arises from his contempt of court
11 charges and conviction in San Diego Superior Court in 2011. (See
12 id. at 4-5, 7-8.)

13 Plaintiff alleges that in November 2010, Jeffrey Freedman¹
14 obtained a three-year restraining order against Hupp in San Diego
15 Superior Court. (Id. at 4.) In July 2011, Freedman brought
16 contempt charges against Hupp for sending letters to Freedman in
17 violation of the restraining order. (Id. at 5.) Defendant William
18 Kiernan, an attorney from the San Diego County Office of the
19 Assigned Counsel, was appointed to represent Hupp. (Id.) Hupp
20 alleges that Kiernan failed to investigate the case or request
21 discovery, failed to communicate with Hupp, and that his lack of
22 preparation amounted to ineffective assistance of counsel. (Id. at
23 6-7.) Plaintiff also claims that Defendants performed DNA and
24 fingerprint tests on the letters and envelopes allegedly sent by
25 him, but Defendants wrongfully withheld this exculpatory forensic
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28 ¹ All claims against Defendant Freedman in this case were
dismissed on June 4, 2012 [ECF No. 35].

1 evidence until February 2012, when they produced the evidence in
2 another court case. (Id. at 11-12.)

3 Plaintiff claims that he was wrongfully convicted based on
4 insufficient evidence and sentenced to twenty-five days in custody
5 and a \$5,000 fine. (Id. at 7.) Hupp alleges that the trial judge
6 improperly denied him custody credits under the California Penal
7 Code section 4019. (Id. at 8.)

8 On January 3, 2012, Hupp reported to the San Diego Sheriff's
9 Department to serve his twenty-five day sentence. (Id. at 9.)
10 Plaintiff claims that he told the Sheriff's Department personnel
11 that they had to apply his custodial credits under California Penal
12 Code, but they refused to apply the section 4019 credits. (Id.)
13 Hupp also claims that he was denied access to the law library and
14 prevented from filing legal papers. (Id. at 10-11.)

15 Plaintiff alleges that Defendants never disclosed to him that
16 the San Diego District Attorney's office, San Diego Police
17 Department, Deputy District Attorney Romo, and Defendant Wetzel
18 were investigating and assisting Deputy Attorney General Dracar
19 prosecute the November 2011 civil contempt proceedings against
20 Hupp. (Id. at 7, 11.) Hupp also claims that Defendants failed to
21 disclose exculpatory DNA and fingerprint evidence obtained from the
22 letters Freedman received in violation of Plaintiff's due process
23 rights under Brady v. Maryland, 373 U.S. 83 (1963). (Id. at 11-
24 12.)

25 These allegations form the basis of Plaintiff's claims for
26 violation of civil rights, conspiracy to withhold Brady evidence,
27 interference with legal mail and free speech, unlawful detention,
28 intentional infliction of emotional distress, as well as gross

1 negligence in the hiring, training, supervision, and retention of
 2 prosecutors and peace officers. (See id. at 12-29.) Hupp claims
 3 that Defendants' actions caused him emotional and psychological
 4 injuries, embarrassment, humiliation, shame, fright, fear, and
 5 grief. (Id. at 14, 20-21.) In connection with his claims,
 6 Plaintiff seeks compensatory and punitive damages exceeding
 7 \$75,000, as well as declaratory and injunctive relief. (Id. at 35-
 8 37.)

9 II. LEGAL STANDARD

10 Plaintiff's Ex Parte Motion seeks to quash three subpoenas
 11 served by Defendant Wetzel on the custodian of records at the San
 12 Diego Sheriff's Department. (See Pl.'s Ex Parte Mot. Quash Raymond
 13 Wetzel Subpoena 1,² ECF No. 133; Pl.'s Supplemental Br. Supporting
 14 Ex Parte Mot. Quash Raymond Wetzel Subpoena 2, ECF No. 136.) Hupp
 15 argues that the subpoenas are overly broad, lack relevance, and the
 16 records sought are not material. (Pl.'s Ex Parte Mot. Quash
 17 Raymond Wetzel Subpoena 8, ECF No. 133.) He also claims that the
 18 subpoenas constitute "an extreme invasion into the personal privacy
 19 of Plaintiff." (Id. at 9.)

20 A party may serve a subpoena commanding a nonparty "to produce
 21 documents, electronically stored information, or tangible things."
 22 Fed. R. Civ. P. 45(a)(1)(C). The subpoena is subject to the
 23 relevance requirements set forth in Rule 26(b) and may command the
 24 production of documents which are "nonprivileged" and "relevant to
 25 any party's claim or defense." Fed. R. Civ. P. 26(b)(1). Relevant
 26 information includes matter "reasonably calculated to lead to the

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 28 ² Because Hupp's Emergency Ex Parte Motion is not
 consecutively paginated, the Court will cite to it using the page
 numbers assigned by the Court's ECF system.

1 discovery of admissible evidence." Id. The information sought
2 need not be admissible at trial as long as it appears reasonably
3 calculated to lead to the discovery of admissible evidence. Id. A
4 "relevant matter" under Rule 26(b)(1) is any item that "bears on,
5 or that reasonably could lead to other matter that could bear on,
6 any issue that is or may be in the case." Oppenheimer Fund, Inc.
7 v. Sanders, 437 U.S. 340, 351 (1978).

8 On a timely motion, a subpoena may be quashed if it "requires
9 disclosure of privileged or other protected matter, if no exception
10 or waiver applies" Fed. R. Civ. P. 45 (c)(3)(A)(iii).

11 A person withholding subpoenaed information under a
12 claim that it is privileged or subject to protection as
trial-preparation material must:

13 (i) expressly make the claim; and

14 (ii) describe the nature of the withheld documents,
15 communications, or tangible things in a manner that,
16 without revealing information itself privileged or
protected, will enable the parties to assess the claim.

17 Fed. R. Civ. P. 45(d)(2)(A). Rule 26(b) requires essentially the
18 same information from a party who withholds information otherwise
19 discoverable due to a claim of privilege. Fed. R. Civ. P.
20 26(b)(5)(A). Any objection to a subpoena must be served on the
21 party or attorney requesting the discovery "before the earlier of
22 the time specified for compliance or 14 days after the subpoena is
23 served." Fed. R. Civ. P. 45(c)(2)(B).

24 Neither Plaintiff nor Defendants address what law should be
25 applied to Hupp's claims. Generally, in federal question cases,
26 privileges asserted in response to discovery requests are
27 determined under federal law, not the law of the forum state. Fed.
28 R. Evid. 501; United States v. Zolin, 491 U.S. 554, 562 (1989).

1 Federal Rule of Evidence 501 also states that "in a civil case,
2 state law governs privilege regarding a claim or defense for which
3 state law supplies the rule of decision." Fed. R. Evid. 501.

4 In his Complaint, Hupp alleges both a federal civil rights
5 claim and state law claims. "[I]n federal question cases . . . in
6 which state law claims are also raised . . . , any asserted
7 privileges relating to evidence relevant to both state and federal
8 claims are governed by federal common law." 6 James Wm. Moore et
9 al., Moore's Federal Practice § 26.47[4], at 26-334.1 (3d ed.
10 2013); see Fitzgerald v. Cassil, 216 F.R.D. 632, 635 (N.D. Cal.
11 2003) (applying federal law of privilege to alleged violations of
12 Fair Housing Act, 42 U.S.C. § 3604, and various state law claims).
13 Similarly, in Stallworth v. Brollini, 288 F.R.D. 439, 442 (N.D.
14 Cal. 2012), the court applied federal common law to resolve claims
15 of privilege in an action alleging § 1983 and state law claims.
16 Accordingly, federal common law will be applied to Hupp's claims.
17 "State law may provide guidance, but it is not the law of the
18 circuit." Gorton v. Bick, Case No. 1:05-CV-00354-LJO-DLB PC, 2010
19 U.S. Dist. LEXIS 107783, at *5 (E.D. Cal. Sept. 28, 2010) (citing
20 Green v. Baca, 226 F.R.D. 624, 643-44 (C.D. Cal. 2005)).

21 California law recognizes a constitutional right to privacy
22 in an individual's medical history. See Pettus v. Cole, 49 Cal.
23 App. 4th 402, 440, 57 Cal. Rptr. 2d 46, 72 (1996) ("[I]t is well
24 settled that the zone of privacy created by [article I, section 1
25 of the California Constitution] extends to the details of a
26 patient's medical and psychiatric history.") (citing Cutter v.
27 Brownbridge, 183 Cal. App. 3d 836, 842, 228 Cal. Rptr. 545, 549
28 (1986), and Wood v. Superior Court, 166 Cal. App. 3d 1138, 1147,

212 Cal. Rptr. 811 (1985)); Bd. of Med. Quality Assurance v. Gherardini, 93 Cal. App. 3d 669, 678, 156 Cal. Rptr. 55, 60 (1979) ("[F]undamental to the privacy of medical information 'is the ability to control [its] circulation[.]'" (alteration in original) (citation omitted)).

But this constitutional right to privacy is not absolute and must be balanced against a compelling public interest, such as "the legitimate interests of real parties in preparing their defense." Jones v. Superior Court, 119 Cal. App. 3d 534, 550, 174 Cal. Rptr. 148, 158 (1981); see Ragge v. MCA/Universal Studios, 165 F.R.D. 601, 604 (C.D. Cal. 1995) (discussing documents in employee's personnel files). Thus, a California plaintiff who seeks recovery for mental injuries "unquestionably waive[s] [the] physician-patient and psychotherapist-patient privileges as to all information concerning the medical conditions which [he has] put in issue" Britt v. Superior Court, 20 Cal. 3d 844, 849, 574 P.2d 766, 768-69, 143 Cal. Rptr. 695, 697 (1978).

In Carriq v. Kellogg USA Inc., Case No. C12-837RSM, 2013 U.S. Dist. LEXIS 13560, at *5 (W.D. Wash. Jan. 30, 2013), the court discussed federal law of waiver applicable to physician-patient and psychotherapist-patient privileges.

District courts have adopted different approaches to determine whether the patient has waived his or her psychotherapist-patient privilege. Under the broad approach, . . . a simple allegation of emotional distress in a complaint constitutes waiver. Under the narrow approach, . . . there must be an affirmative reliance on the psychotherapist-patient communications before the privilege will be deemed waived.

There is a middle ground Under this approach, courts have generally found a waiver when the plaintiff has done more than allege "garden-variety" emotional distress.

1 Id. at *5-6 (internal citations omitted). This Court agrees that a
 2 waiver of privacy rights to mental health records should occur only
 3 if a plaintiff asserts "more than a garden-variety claim of
 4 emotional distress." Turner v. Imperial Stores, 161 F.R.D. 89, 97
 5 (S.D. Cal. 1995) (applying middle approach); see Fitzgerald v.
 6 Cassil, 216 F.R.D. at 633, 638-39 (adopting narrow approach and
 7 finding no waiver of privacy when plaintiff did not allege "cause
 8 of action for intentional or negligent infliction of emotional
 9 distress" or "specific psychiatric injury or disorder or unusually
 10 severe emotional distress extraordinary in light of the
 11 allegations").

12 **III. DISCUSSION**

13 Defendant City of San Diego issued three subpoenas to the San
 14 Diego Sheriff's Department requesting production of various records
 15 related to Plaintiff Paul Hupp, booking number 12500589. (Decl.
 16 Milligan Opp'n Pl.'s Mot. Quash Subpoena Attach. #2, at 3,³ ECF No.
 17 137.) The first subpoena is addressed to the custodian of records,
 18 San Diego County Sheriff's Department, 9621 Ridgehaven Ct., San
 19 Diego, CA 92123, and seeks records and video recordings, namely
 20 "[c]omplete records from the first date to the present, including
 21 but not limited to any records/documents that may be stored
 22 digitally and/or electronically: records in your possession,
 23 custody, or control pertaining to this person." (Id. at 3-4.) The
 24 second subpoena is directed to the custodian of records, San Diego
 25 County Sheriff's Department, located at 5255 Mt. Etna Dr., San

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 28 ³ Because the attachment to the Declaration of Milligan is not
 consecutively paginated, the Court will cite to it using the page
 numbers assigned by the Court's ECF system.

1 Diego, CA 92117, and seeks "photographs," more specifically
2 described in the attachment as follows:

3 Complete photographs from the first date to the present,
4 including but not limited to any records/documents that
5 may be stored digitally and/or electronically: any and
6 all photographs or duplicate laser copies thereof
(photocopies are not acceptable) in your possession,
custody, or control (either received by you or taken by
you).

7 Booking #12500589.

8 (Id. at 7-8.) The third subpoena is addressed to the custodian of
9 records, San Diego County Sheriff's Medical Records Department,
10 5530 Overland Ave., Bldg. 5530, Ste. 370, San Diego, CA 92123, and
11 requests the production of "Billing Records; Photographs; Medical
12 Records; Mental Health Records; Dental Records; X-Rays/MRIs/CT
13 scans; Records; [and] Video Recording(s)" (Id. at 10.) The
14 attachment to the subpoena provides an exhaustive, albeit at times
15 repetitious, clarification of this request:

16 Complete medical records, billing records, and radiology
17 images from the first date of treatment to the present,
18 including but not limited to any records/documents that
19 may be stored digitally and/or electronically: documents,
20 medical reports, doctor's entries, nurse's notes,
21 progress reports, cardiology reports, radiology reports,
22 x-ray reports, MRI reports, lab reports, pathology
23 reports, monitor strips, physical therapy records,
24 case history, emergency records, diagnosis, prognosis,
25 condition, admit and discharge records, charges, explanation
26 of benefits, payments, adjustments, write-offs, balances due,
27 itemized billing charges, X-rays, MRI's, CT's, myelograms,
28 tomograms, MRA's PET scans, CAT scans, fluoroscopy, documents
including sign-out sheets or communications which demonstrate
that any items were checked out from or removed from your
facility, radiology reports, x-ray reports, MRI reports, CT
reports, myelogram reports, cardiology reports, and any other
radiology reports. All approved radiology images must be
produced on film or on a DICOM compliant CD only. Prior to
duplication, please provide a breakdown of all radiology
images in your possession, custody, or control. All emails
between physicians and the patient regarding physical
complaints, symptoms, and treatment, including secure
messages.

1 Complete dental records from the first date of treatment
 2 to the present, including but not limited to any
 3 records/documents that may be stored digitally and/or
 4 electronically: dental records/reports, radiology
 5 reports, notes, correspondence, prescription slips,
 6 telephone messages, diagnostic reports, and itemized
 7 statements of the billing charges. All emails between
 8 physicians and the patient regarding physical complaints,
 9 symptoms, and treatment, including secure messages.

10 Complete mental health records from the first date of
 11 treatment to the present, including but not limited to
 12 any records/documents that may be stored digitally and/or
 13 electronically: medical records pertaining to any and all
 14 care, treatment, and/or examinations, notes, records, and
 15 reports of psychotherapy diagnosis, evaluation, and
 16 treatment, and any other records relating to mental
 17 health. All emails between physicians and the patient
 18 regarding physical complaints, symptoms, and treatment,
 19 including secure messages.

20 Booking #12500589

21 To include any and all records from San Diego County Jail
 22 Medical Records; William Didier, Chief, Medical Records;
 23 and 8525 Gibbs Dr., Ste. 303, San Diego, CA 92123.

24 (Id. at 11.)

25 Plaintiff objects to the production of his records on the
 26 grounds that the subpoenas are overly broad, do not seek relevant
 27 evidence, invade his privacy, and are protected from disclosure by
 28 the physician-patient privilege. (Pl.'s Mem. P. & A. Supp. Ex
 Parte Mot. Quash 9-10, ECF No. 133.) Hupp argues that the
 information requested is not relevant to any defense Wetzel might
 have. Plaintiff contends that Defendants are conducting a
 "'fishing expedition' into the personal, private and confidential
 life of Plaintiff in order to harass and intimidate him"
 (Id. at 9.) Hupp points out that although he expressed the
 concerns about the scope of the information sought in the
 subpoenas, Defendants have not agreed to limit their request. (Id.
 at 10-11.) Plaintiff therefore seeks to quash the subpoenas in

1 their entirety, and asks the Court to sanction Defendant Wetzel.
2 (Id. at 11-12.)

3 In response, Defendants City of San Diego and Raymond Wetzel,
4 aka Charlie Wetzel, argue that "Plaintiff has placed his medical
5 records at issue[,] " which justifies the intrusion into his
6 privacy. (Defs.' Opp'n Mot. Quash 2, ECF No. 137.) They argue
7 that Hupp's medical records are relevant to whether his alleged
8 emotional distress may have been caused by something other than
9 Defendants' actions, such as any pre-existing medical or
10 psychological issues. (Id. at 2-3.) Defendants claim that
11 Plaintiff waived any privacy rights he normally would have by
12 alleging emotional distress, and fairness dictates they be allowed
13 access to Hupp's medical records. (Id. at 3-4.) They acknowledge
14 that the subpoenas seek a "variety of different categories of
15 documents, but nothing that is unusual in a personal injury case."
16 (Id. at 4.) Defendants also point out that because some of the
17 events alleged in the pleadings occurred while Hupp was housed at
18 the San Diego County Jail, any medical treatment he received while
19 there is relevant to the case. (Id.) Finally, they argue that any
20 privacy concerns can be properly addressed by a narrowly-drawn
21 protective order. (Id. at 5.)

22 Plaintiff replies that to the extent privacy is waived by
23 bringing the suit, the waiver applies to the matters directly
24 related to the litigation. (Pl.'s Reply 2, ECF No. 144.) Hupp
25 argues that Defendants failed to show a compelling interest in
26 accessing his complete medical records and photographs. (Id. at 2-
27 3.) He also claims that he "has not waived any privilege by
28 placing his medical condition at issue" (Id. at 4.) Hupp

1 contends that because Defendants fail to show any relevance of his
2 medical records to this litigation, the Court should grant his
3 request to quash the subpoenas. (Id. at 4-6.)

4 To the extent Plaintiff objects to the subpoenas on the
5 relevance ground, the Court overrules his objection in part. In
6 his fifth cause of action, Hupp alleges a claim for intentional
7 infliction of emotional distress against Defendants San Diego
8 Police Department and Wetzel. (Third Am. Compl. 20-21, ECF No.
9 64.) Plaintiff contends that Defendants brought civil contempt of
10 court charges against him with intent to "harass, annoy,
11 intimidate, incite, threaten and instill fear" (Id. at
12 13.) He claims that he "suffered injuries as a proximate cause of
13 [Defendants]'s actions, including, but not limited to, the
14 following, to wit: (1) humiliation; (2) loss of liberty; (3)
15 emotional distress; (4) psychological distress; (5) losses of the
16 safety, pleasure, joy and vitalities of life that are of a
17 continuing nature." (Id. at 14.) He seeks over \$75,000 in
18 compensation for emotional damages that he allegedly suffered
19 because of Defendants' actions. (Id. at 35.)

20 By alleging a claim for intentional infliction of emotional
21 distress and seeking damages for mental and emotional injuries,
22 Hupp is seeking more than garden-variety emotional distress
23 damages. Plaintiff has placed at issue the extent of his emotional
24 distress and therefore waived his privacy rights with respect to
25 his medical records. A plaintiff who raises issues concerning his
26 mental or emotional condition and seeks damages for mental or
27 emotional injuries waives the right to privacy with respect to
28 those issues. See Schwenk v. City of Alameda, No. C-07-00849 SBA

1 (EDL), 2011 U.S. Dist. LEXIS 18836, at *2-3 (N.D. Cal. Feb. 11,
2 2011) (denying motion to compel release of mental health records
3 where plaintiff claimed garden variety emotional distress damages
4 and did not assert claims for intentional or negligent infliction
5 of emotional distress); EEOC v. Vail Corp., Civil Action No. 07-cv-
6 02035-REB-KLM, 2008 U.S. Dist. LEXIS 86046, at *7 (D. Colo. Oct. 2,
7 2008) (finding that mental condition was not "in controversy"
8 absent a separate claim for intentional infliction of emotional
9 distress or "a damages claim for severe and emotionally devastating
10 harm") (citation omitted). Hupp's waiver, however, only applies to
11 the records that are clearly relevant and directly related to his
12 mental and emotional injuries. See, e.g., In re Lifschutz, 2 Cal.
13 3d 415, 427, 467 P.2d 557, 564, 85 Cal. Rptr. 829, 836 (1970)
14 ("[T]he patient-litigant exception of section 1016 of the
15 [California] Evidence Code compels disclosure of only those matters
16 which the patient himself has chosen to reveal by tendering them in
17 litigation.").

18 In addition to Hupp's mental health records, Defendants'
19 subpoenas seek production of his dental records, billing
20 statements, radiology and lab reports, and many other items of
21 information not directly related to his claim of intentional
22 infliction of emotional distress or any other claim. To the extent
23 they argue that complete medical records are discoverable because
24 Plaintiff's alleged emotional injury may have been caused by
25 something other than Defendants' actions, their speculation is not
26 sufficient to warrant disclosure.

27 In this case, Hupp has placed his psychological condition at
28 issue only to the extent it was caused by Defendants' actions.

1 Unlike a typical personal injury case, Plaintiff does not allege a
2 physical injury caused by Defendants that required medical
3 treatment. Instead, he claims that Defendants' conduct in bringing
4 civil contempt of court charges violated his civil rights and
5 caused him emotional distress. As currently stated, Defendants'
6 discovery requests are overbroad. In opposing the Ex Parte Motion
7 to Quash, they fail to explain how Hupp's entire medical record is
8 relevant to the claims in this case.

9 Plaintiff has not waived his privacy rights with regard to his
10 complete medical record by bringing a claim for intentional
11 infliction of emotional distress. Britt, 20 Cal. 3d at 863-64, 574
12 P.2d at 779, 143 Cal. Rptr. at 707. Additionally, Hupp has made a
13 timely objection to such a disclosure by bringing this Ex Parte
14 Motion. See Fed. R. Civ. P. 45(c)(2)(B). Therefore, although
15 Defendants are entitled to reasonable discovery that will show the
16 nature and possible causes of Hupp's emotional injury, their
17 request for the array of medical records, doctors' entries and
18 reports, nurses' notes, messages, images and video records is
19 overbroad and must be limited to the information proximately
20 related to the causes of action alleged.

21 Accordingly, Defendants' first subpoena addressed to the San
22 Diego County Sheriff's Department, 9621 Ridgehaven Ct., San Diego,
23 CA 92123, seeking records and video recordings, is limited to
24 records reflecting Hupp's mental health condition. Similarly,
25 production of any photographs under Defendants' second subpoena
26 directed to the custodian of records at the 5255 Mt. Etna Dr., San
27 Diego, CA 92117, is hereby limited to photographs of Plaintiff that
28 reflect his mental health condition, if any. Defendants' third

subpoena addressed to San Diego County Sheriff's Medical Records Department, 5530 Overland Ave., Bldg. 5530, Ste. 370, San Diego, CA 92123, which seeks "Billing Records; Photographs; Medical Records; Mental Health Records; Dental Records; X-Rays/MRIs/CT scans; Records; [and] Video Recording(s)" is modified as follows: (1) the request in the subpoena is stricken except the words "Mental Health Records"; (2) the first two paragraphs of Attachment A are stricken in their entirety. The remaining paragraph three in Attachment A is modified as follows:

Complete mental health records from the first date of treatment to the present, including but not limited to any mental health records/documents that may be stored digitally and/or electronically: medical records pertaining to any ~~and all~~ mental health care, treatment, and/or examinations, notes, records, and reports of psychotherapy diagnosis, evaluation, and treatment, and any other records relating to mental health. All emails between physicians and the patient regarding ~~physical or~~ mental complaints, symptoms, and treatment, including secure messages.

Booking #12500589.

To include any and all records from San Diego County Jail Medical Records; William Didier, Chief, Medical Records; and 8525 Gibbs Dr., Ste. 303, San Diego, CA 92123.


IV. CONCLUSION

For the reasons stated above, the Court **GRANTS** the Ex Parte Motion to Quash the subpoenas to the extent they seek records not related to Hupp's mental or emotional injuries. The Court **DENIES** the Ex Parte Motion to Quash the subpoenas in any other respect. Any production under the subpoenas must be consistent with this

1 Order and limited to Plaintiff's mental health records as discussed
2 herein.

3 **IT IS SO ORDERED.**

4 Dated: September 25, 2013


Ruben B. Brooks
United States Magistrate Judge

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6 cc: Judge Curiel
7 All Parties of Record
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